STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. Y-05/08-222
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals a decision by the Office of Vermont Health Access (OVHA) denying prior authorization for physical therapy services beyond one year from petitioner's eligibility date. The issue is whether the petitioner meets the eligibility criteria for therapy services beyond one year from the onset of treatment.

The decision is based upon the testimony adduced at fair hearing and the stipulated exhibits admitted at hearing that encompass OVHA records and medical documentation from the petitioner.

FINDINGS OF FACT

1. The petitioner is a thirty-eight-year-old woman who became disabled in 2006 due to complications arising after major surgery. Petitioner was previously employed from 1992 until part of 2006 working in various capacities with children as a teacher, head start administrator, and in a child care facility. Petitioner would like to find a way to

deal with her underlying condition so that she can return to working with children.

2. Before detailing the information regarding petitioner's past physical therapy and her request for an extension of physical therapy, it is helpful to set out the medical (both physical and psychological) context of petitioner's medical condition. Petitioner suffered a number of complications after a hysterectomy including pelvic floor dysfunction resulting in spasms, associated pain, and the loss of bladder and bowel function. As a result, petitioner has been and is being treated by a number of medical providers. Petitioner is also in therapy dealing with complex Post Traumatic Stress Disorder (PTSD) due to her victimization as a child from physical, sexual, and emotional abuse. The impacts of her physical and psychological condition cannot be viewed in isolation from each other. Dr. M.B., petitioner's treating physician, summarized petitioner's condition by noting that "[t]here is nothing about [petitioner's] case that is 'usual or customary'..."

Since petitioner's surgery, petitioner has had multiple sigmoidoscopies under anesthesia to deal with bowel impactions, used laxatives and enemas, and met with specialists to determine causes and what can be done to

alleviate her condition. Petitioner has been to the emergency room on numerous occasions. Her doctors would like to avoid a colostomy or further surgery especially since it is not clear that further surgery will alleviate petitioner's functional problems. Pertinent information from petitioner's medical providers will be spelled out later.

3. Part of petitioner's treatment includes physical therapy. Petitioner first received authorization for a four month period of physical therapy for the period of October 26, 2006 through February 26, 2007. The Medicaid regulations, infra, automatically authorize an initial four months of physical therapy. Petitioner received authorization for two more four month periods of physical therapy for a total of one year. OVHA informed petitioner in writing upon approving her third period of physical therapy that no further therapy would be allowed because the regulations limit physical therapy to a one year period except in certain circumstances. OVHA did authorize an additional eight sessions after the one year mark to allow petitioner to learn to use a TENS unit and specific exercises for a home program. OVHA denied additional requests for physical therapy.

4. Petitioner's original diagnoses for physical therapy included pelvic floor dysfunction, dyspareunia/vaginismis, vulvar vestibulitis, and bowel and bladder dysfunction.

5. Petitioner first received physical therapy from J.K. for approximately eight months. Petitioner testified that her initial physical therapy focused on urination, not on her bowel function. She described being hooked up to a computer with leads, using biofeedback and training muscles in her pelvic floor.

Petitioner testified[1] that she does not have the ability to urinate on her own despite physical therapy and that she must self-cathertize daily.

Petitioner did not feel that she was making progress with J. K. and received a referral to K.DeC. Petitioner started therapy with K.DeC. in September 2007. Petitioner's focus was on her bowel function and pelvic floor dysfunction.

6. Petitioner testified that she experienced progress with K.DeC. K.DeC. used myofascial release as part of her physical therapy. Petitioner testified that she was able to have three to four bowel movements per week as a result of

[1] Prior to the hearing, petitioner was hospitalized for tests for a cardiac problem, and she testified by telephone.

the physical therapy. Because she had more frequent bowel movements, she had less pain, more appetite, and felt better. According to petitioner, her improved condition continued until her physical therapy was cut off and her body shut down.

7. K.DeC. first filed an extension for prior authorization beyond the one year limit for the period of October 26, 2007 to February 26, 2008. The stated goals were:

Goal 1: Normal pelvic floor resting level of tension.
Goal 2: Resolve pelvic floor trigger points 50%.
Goal 3: Ability to void one time/day.
Goal 4: Move bowels

8. S.M. is a physical therapist; she has worked for OVHA for the past six years reviewing prior authorization requests including requests for physical therapy. As part of her review, S.M. routinely speaks to the individual's providers. S.M. has been a physical therapist for 24 years and is very knowledgeable about physical therapy.

S.M. has reviewed all of the prior authorization requests in petitioner's case. S.M. testified by telephone and stated that she had concerns about the additional request for physical therapy. She stated that the requests in petitioner's file did not document efforts to educate

petitioner on how to self-manage her condition during the initial year of Medicaid coverage. According to S.M., the usual practice is for the physical therapist to set specific goals with the patient and to help the patient learn specific tools to self-manage their condition. Physical therapy is typically of time-limited duration.

S.M. spoke with K.DeC. and noted that K.DeC. wanted to train petitioner how to use a TENS unit (for pain management). S.M. noted that petitioner was at risk of dependence upon her physical therapist based on information from her conversation with K.DeC. S.M. authorized eight additional units of physical therapy for equipment training and to instruct petitioner on a home program. The decision notice was sent November 13, 2007 and covered the period of November 12, 2007 until March 11, 2008.

As a result, Petitioner was trained to use the TENS unit and the home program and continues to use the TENS unit and home program.

9. K.DeC. sent a new prior authorization request during April 2008 for physical therapy during the period of May 9, 2008 to September 8, 2008.[2] The stated goals were:

[2] It should be noted that the time periods in the requests and the time period in which the services are delivered do not always correspond.

> Goal 1: Ability to relax/"let go" the pelvic floor muscles.
> Goal 2: Decrease pelvic floor trigger points 75-100%.
> Goal 3: Pain free pelvic exam per MD.[3]

This request was denied and an appeal was filed on or about May 23, 2008. As part of the review, S.M. spoke to K.DeC. who volunteered that the petitioner was dependent on her and there was not much more to measure. S.M. also looked at whether Dyspareunia was a new diagnosis that could trigger additional coverage and decided it was part of petitioner's pelvic floor dysfunction.

10. Subsequent to the denial, K.DeC. filed a new prior authorization request for the period starting May 28, 2008. OVHA continued to deny physical therapy and this new request and denial have been incorporated into this appeal.

In the most recent prior authorization request, K.DeC. noted that petitioner had not had a bowel movement in 17 days leading to increased loss of function. The stated goals included:

> Goal 1: Spontaneous and consistent bowel function.
> Goal 2: Good ability to contract, relax and bulge pelvic floor.
> Goal 3: Minimize soft tissue restrictions.
> Goal 4: Spontaneous and consistent bowel function without physical therapy.

[3] The third goal was achieved.

11. Petitioner testified that she was unable to have a bowel movement for seventeen days which included fourteen days in which she did not receive physical therapy. Petitioner returned to K.DeC. for physical therapy. Petitioner testified that it has taken her one month to respond to physical therapy, decrease laxatives, and have bowel movements although she has not yet returned to her prior status of three to four bowel movements per week. Petitioner is fearful that without physical therapy she will again become impacted, her condition will deteriorate, and she will face surgery.

12. Petitioner's medical providers support petitioner's request for additional physical therapy as medically necessary and submitted documentation to OVHA subsequent to petitioner's major bowel impaction. The documentation includes:

(a) June 2, 2008 letter from K.DeC. stating:

> Due to patients recent medical issues, physical therapy was interrupted 2-3 times...During these interruptions, despite a previously consistent bowel pattern, patient has experienced no bowel function and a significant increase in her abdominal pain. Clinically, she demonstrated an increase in pelvic floor muscle spasm and pain...It took 3 therapy before her bowel function resumed...
>
> [Petitioner's] extensive medical history is significant for multiple invasive diagnostic

> testing and treatments, surgical procedures and medications, all without any significant long term functional improvement. The skilled, manual, hands-on myofascial work appears to be the one mode of treatment that [petitioner] has responded well to. I feel it would be a grave clinical mistake to discontinue the treatment at this time as she is clearly not able to maintain normal bowel function independently at this time.

(b) May 27, 2008 letter from Dr. M.B., petitioner's treating doctor. Dr. M.B. stated; "[t]he only treatment that has made any real progress toward improving the function of her bowel or her bladder has been PT with K.DeC." Dr.M.B. added that petitioner has made progress dealing with her PTSD and stressed the effects of positive physical touch upon a sexual abuse victim. She added that none of the other treatments have helped as much as PT.

(c) May 29, 2008 letter from Dr. G.T., surgeon who has treated petitioner since October 20, 2006 including multiple studies and tests (some under anesthesia) documenting pelvic floor dysfunction. One of his goals is to avoid a colostomy given the petitioner's young age.

He wrote:

> [Petitioner] has tried multiple times to go off the physical therapy, and within days to a week she is back to significant pain, requiring trips to the operating room for manual disimpaction, multiple drainage procedures, along with discomfort, pain and psychological problems.

(d) May 30, 2008 letter from Dr. K.M. Dr. K.M. performed petitioner's hysterectomy during September 2006 to remedy menorrhagia and adenomyosis. Dr. K.M. stated that petitioner has not plateaued using physical therapy. She stated that pelvic floor physical therapy has helped other patients with pain and function. She added that she was afraid petitioner would backslide without the PT.

(e) May 29, 2008 letter from Dr. J.S., an urologist petitioner was referred to. He wrote that PT can improve petitioner's bladder and bowel function so that she will not need reconstructive surgery. He wrote that "[p]remature stopping of the therapy may precipitate and immediate need for reconstructive surgery."

(f) June 3, 2008 letter from K.L, therapist who treated petitioner until recently over a twenty-two month period. K.L. addressed the positive effects from physical therapy on petitioner's psychological treatment for PTSD including:

> In physical therapy [petitioner] has been able to trust a health care provider while experiencing painful and intrusive hands-on work. As this kind of treatment inadvertently parallels the abuse [petitioner] has suffered in the past it gives her access to the formerly suppressed felt experience of what she endured...She has then brought what arises in her physical therapy sessions into her counseling session...Constriction in the body is a common component of PTSD and the work [petitioner] does in physical therapy confronts this tendency...
>
> It is important to note further that without the bowel function that her physical therapy has enabled [petitioner] has had to undergo invasive and painful procedures to evacuate her bowels manually. This is difficult for anyone, but particularly so for someone with PTSD and a sexual abuse history. We have devoted much time in therapy to processing these difficult procedures as they have the effect of being re-traumatizing to her. It is clearly in [petitioner's] best interests psychologically to be subject to less invasive forms of treatment to treat her physical issues.

(g) June 1, 2008 letter from M.A.B., LICSW, who has recently become petitioner's therapist echoing the need for physical therapy since the PT reduces the need for invasive and/or emergency procedures that are used to treat petitioner's bowel function.

(h) May 29, 2008 letter from Dr. D.C. regarding the need to continue PT to help petitioner maintain current function although that function is below normal limits. Dr. D.C. stated that petitioner could experience lack of function and increased pain if the PT stopped.

13. S.M. reviewed the additional documentation but determined that petitioner still did not meet the criteria for an extension of physical therapy services. In her medical basis statement, S.M. stated her concerns with the additional documentation.[4]

S.M. is concerned that continuing physical therapy is not tied to specific goals that would prevent physical therapy from becoming an ongoing palliative service. She noted there is a major psychological component to petitioner's case raising a concern whether a physical therapist can deal with these issues.

S.M. continues to be concerned about dependency and is concerned that self-management techniques have not been adequately identified and integrated into petitioner's physical therapy. S.M. also notes that there is a lack of

[4] S.M. brought up the large number of visits approved in petitioner's case; a total of 169 visits were approved. However, petitioner had numerous medical problems and procedures during this time period. There was no evidence of the actual number of physical therapy sessions petitioner was able to attend or how to factor in physical therapist decisions that may have impacted petitioner's program such as the lack of progress with the first physical therapist or lack of self-management programs until later in petitioner's care.

peer reviewed literature supporting myofascial release. S.M.'s testimony was consistent with her written concerns.

S.M. wrote that she brought up the use of a self-massage program with K.DeC. that generated discussion and the idea of using a wand for internal massage. She wrote:

> Massage/soft tissue mobilization techniques can be taught to lay people. It is recommended that [petitioner] be instructed in self-massage techniques to enable self-management of her bowel function.

There is no evidence that authorizing additional sessions for teaching internal self-massage was considered.

14. S.M.'s decision was reviewed by OVHA's medical director who concurs in the decision.

15. Petitioner testified that she wants to be able to self-manage her program although she has concerns about her ability to learn these techniques.

16. Petitioner does not have a support person who can help her. At this point, she has not been taught techniques such as self-massage. Petitioner recently had an acute episode characterized by her inability to have a bowel movement for seventeen days. This episode corresponded to an interruption in her physical therapy leading to loss of function. She has not yet regained her earlier level of

functioning, and there is a danger of loss of function if physical therapy is interrupted at this time.

ORDER

OVHA's decision is reversed and remanded to approve a time-limited physical therapy program to teach petitioner self-management skills related to her bowel function including exercises such as internal massage.

REASONS

OVHA has adopted regulations that provide the parameters for therapy services covered by Medicaid including physical therapy. These regulations specify the amount, scope and duration of services. M710.

Duration is partially addressed in M710.4(10) which allows therapy services for a four month period; any additional therapy requires prior authorization. The prior authorization requirements in M710.5 state:

> Provision of therapy services (physical, speech or occupational) beyond the initial four-month period is subject to prior authorization review. To receive prior authorization for these services during the eight-month period following the initial four-month period, a physician must submit a written request to the department with pertinent clinical goals and estimated length of time.
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> Prior authorization for therapy services beyond one year from the onset of treatment will be granted only:

- if the service may not be reasonably provided by the patient's support person(s), and
- if the patient undergoes another acute care episode or injury, or
- if the patient experiences increased loss of function, or
- if deterioration of the patient's condition requiring therapy is imminent and predictable.

OVHA has been given the authority to place appropriate limits on medical services including duration. 42 C.F.R. § 440.230(d). OVHA set a one year limit on physical therapy services premised on the belief that recipients should be able to meet their goals within the one year period. However, there is a realization that a particular recipient may need physical therapy services for more than one year. As a result, the regulations allow receipt of physical therapy services past the one year mark if the recipient can meet certain requirements.

The issue is whether the petitioner has demonstrated that she meets the above criteria allowing for receipt of physical therapy services past the one year limit.

Petitioner's medical condition is complex and multi-factorial. She has been receiving ongoing treatment from her primary care doctor, specialists, and therapists

(psychological and physical therapy). OVHA has raised a number of concerns regarding continued physical therapy.

In looking at this case, the Board is using the last request for prior authorization—the request after petitioner went without physical therapy for two weeks which overlapped with her inability to have a bowel movement for seventeen days. The second prong of M710.5 regarding prior authorization for physical therapy services will be addressed first.

The question is whether this episode meets the criteria for the second prong found in M710.5. Petitioner's medical evidence was produced after this episode including new documentation from her physical therapist, K.DeC. that included clearer goals than her previous request and included a strong supporting letter.

The petitioner has pelvic floor dysfunction; the objective evidence from her physicians supports the diagnosis. Pelvic floor dysfunction can obstruct defecation. Petitioner has received biofeedback and training in some exercises but her problems with bowel movements persisted until she started physical therapy with K.DeC. who utilized myofascial release as one of her treatment modalities. Petitioner found that she then was able to have bowel

movements three to four times per week. Her medical providers concur that her bowel function improved; they did not see improvement as a result of their interventions. Her medical providers want to avoid surgery, especially since they do not know whether surgery will impact petitioner's ability to urinate or defecate on her own.

Petitioner suffered a relapse when her physical therapy was interrupted. In addition, Dr. G.T. noted a history of relapses when petitioner attempted to do without physical therapy in the past. Although petitioner went back to physical therapy at her own expense, she has not regained the function she had in the past.

K.DeC. submitted a request for prior authorization after petitioner suffered her relapse, a relapse that occurred after two to three interruptions in petitioner's physical therapy. The new request included goals for consistent bowel function and for the petitioner to get to the point where she can maintain consistent bowel function without physical therapy. In her June 2, 2008 letter, K.DeC. indicated that petitioner could not independently maintain bowel function. Although S.M. testified that K.DeC. had concerns about dependence by petitioner, those conversations predate the

request and letter submitted by K.DeC. after petitioner's major bowel impaction.

In this case, petitioner did experience increased loss of function when her physical therapy was interrupted. In addition, until petitioner learns to self-manage her condition, deterioration is imminent and predictable. The bowel impaction over a seventeen day period can be considered an acute care episode. The second prong of M710.5 is met.

The first prong of M710.5 is also met. Petitioner does not have a support person. More importantly, there is recognition by OVHA that petitioner can be taught certain techniques such as internal massage using a wand. In addition, K.DeC., can teach other techniques such as myofascial release, a technique that has worked for petitioner.

The prior authorization process is built upon an individual review of a particular recipient's condition. Petitioner has met her burden of proof of meeting the criteria for physical therapy beyond one year from her initial eligibility.

However, the Board is mindful that a function of physical therapy is to give the petitioner the tools she needs to self-manage her condition. The record shows that

there are other tools that can be taught petitioner. To do so, OVHA should consult with petitioner's physical therapist and authorize additional physical therapy for a time limited period that incorporates specific goals for petitioner to learn self-management techniques such as internal massage. Accordingly, OVHA's denial of prior authorization for physical therapy is reversed and the case remanded consistent with this decision.

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